

REMARKS

Applicant has amended claims 1, 2, 5-7, and 20. Claims 9-19 and 21-22 have been canceled. Claims 23-36 have been added. These changes have been made to place the claims in better form for examination and to further obviate the 35 U.S.C. §§102(b), 103, and 112 rejections as set forth in the Office Action dated March 16, 2005. It is believed that none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has objected to claims 1, 2, 7, 12, 14 and 16 for the inclusion of a blank line where the ATCC Accession number should be. Applicant has canceled claims 12, 14, and 16. Applicant avers herein that the blanks in claims 1, 2, 7, and new claim 30 will be replaced with the ATCC Deposit Accession number upon allowance of any claims of the present invention.

The Examiner has rejected claims 1, 2, 6, 7, 12, 14, 16-18 and 21 and claims 3-6, 8-11, 13, 15, 19 and 22 dependent thereon, under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner has rejected claims 1, 2, 7, 12, 14, and 16, and claims 3-6, 9-11, 13, 15, 17-22 dependent thereon, as indefinite in that the recitation of "a soybean variety designated S022217", "variety S02217", or "soybean cultivar S022217" do not clearly identify the claimed soybean cultivar and seed and do not set forth the metes and bounds of the claimed invention. Applicant has canceled claims 12, 14, 16-18, and 21. Applicant avers herein that the blanks in claims 1, 2, 7, and new claim 30 will be replaced with the ATCC Deposit Accession number upon allowance of any claims of the present invention. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 6 under 35 U.S.C. §112, second paragraph, as being indefinite in that "said cell or a protoplast of the tissue culture " lacks an antecedent basis. Applicant has amended claim 6. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 7 under 35 U.S.C. §112, second paragraph, as being indefinite in that the recitation of "is capable of expressing" is unclear. Applicant has amended claim 7. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claim 12 under 35 U.S.C. §112, second paragraph, as being indefinite in that it is unclear if the claim is drawn only to the production of progeny that is an F1 hybrid seed, or that it encompasses additional generations of progeny that are derived from these two parents; claim 12 is also indefinite in the recitation of "crossing soybean variety" in that a plant can be crossed, not a variety. Applicant has canceled claim 12. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 16 and 17 under 35 U.S.C. §112, second paragraph, as being indefinite in that the claims are confusing and appear to be duplicates of claims 14 and 15. Applicant has canceled claims 16 and 17. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 18 and 21 under 35 U.S.C. §112, second paragraph, as being indefinite in that "herbicide resistance, insect resistance and disease resistance" are not transgenes. Applicant has canceled claims 18 and 21. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 9-22 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicant has amended claim 20 and canceled claims 9-19, and 21-22. Withdrawal of this rejection is requested.

The Examiner has rejected claims 1-22 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. As stated in the specification on page 30, the seed deposit is being maintained by Stine Seed Farm, Inc. The deposit will be available to the Commissioner during the pendency of this application and, upon allowance of any claims, a deposit of the soybean seed will be made with the American Type Culture Collection.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit will be performed; and
- e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

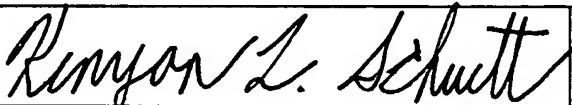
Accordingly, withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 9-22 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103 as obvious over soybean cultivar 739685 (U.S. Patent 6,169,229). Applicant has noted that "soybean cultivar 739685" is not the title of U.S. Patent 6,169,229. Applicant believes that Examiner intended to cite U.S. Patent 6,169,299. Clarification is respectfully requested. Applicant's remarks below are to soybean cultivar 739685 (U.S. Patent 6,169,299). Applicant has canceled claims 9-19 and 21-22 and amended claim 20. Additionally, the Examiner has suggested that there are minor morphological differences between soybean cultivar 739685 and the claimed plants and seeds of S022217. There are numerous differences between the two cultivars. S022217 has a white flower color and a black hilum color, whereas 739685 has a purple flower color and a brown hilum color. The seed size of S022217 is 15.2 g/100 seeds, whereas the seed size of 739685 is 13.0 g/100 seeds. The protein content of S022217 is 35.1%, whereas the protein content of 739685 is 39.4%. The oil content of S022217 is 19.3%, whereas the oil content of 739685 is 16.6%. The mean yield of S022217 is 55.6 bushels/acre, whereas 739685 has a mean yield of only 48.5 bushels/acre. Withdrawal of this rejection is respectfully requested.

Application No. 10/651,440
Amendment dated June 8, 2005
Reply to Office Action dated March 16, 2005

Page 9

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102(b), 103, and 112. Reconsideration of this application and early notice of allowance is respectfully requested.

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT REQUIRED					
NAME AND REG. NUMBER	Kenyon L. Schuett, Reg. No. 44,324				
SIGNATURE			DATE	June 8, 2005	
Address	Jondle & Associates P.C. Suite 200, 9085 East Mineral Circle				
City	Centennial	State	CO	Zip Code	80112
Country	U.S.A.	Telephone	303-799-6444	Fax	303-799-6898